

Entered -01-13-99 - sb
CL 99L0014 - GWENDOLYN BURNS

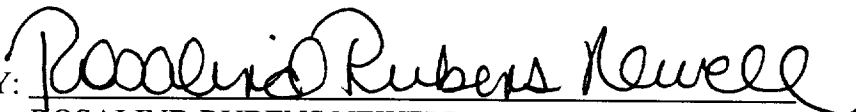
01- R-0380

CLAIM OF:

**GREGORY ELECTRIC COMPANY,
PERRY CONTRACTING and ACSI
through their attorney
Charles Ratz, Esq.
GRAY & GILLILAND, P.C.
Suite 1050
400 Perimeter Center Terrace
Atlanta, Georgia 30346**

For property damages alleged to have been sustained as a result
of the City's failure to mark a water line on August 11, 1999 at 41
Marietta Street.

THIS ADVERSED REPORT IS
APPROVED

BY: 
ROSALIND RUBENS NEWELL
DEPUTY CITY ATTORNEY

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 99L0014

Date: March 1, 2001

Claimant /Victim GREGORY ELECTRIC COMPANY, PERRY CONTRACTING and ACSI
BY: (Atty) (Ins. Co.) Charles Ratz, GRAY & GILLILAND, P.C.
Address: Suite 1050, 400 Perimeter Center Terrace, Atlanta, Georgia 30346
Subrogation: Claim for damages \$ Unspecified Bodily Injury \$
Date of Notice: 1/7/99 Method: Written, Proper X Improper
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 8/11/99 Place: 41 Marietta Street
Department WATER Division
Employee involved Disciplinary Action:

NATURE OF CLAIM: Claimants allege that they sustained damages when they bored and ruptured a water main as a result of the Water Department's failure to mark the water main. They further contend that the City failed to shut off the flow of water within minutes after the rupture took place which caused several businesses down the street to become flooded. However, an investigation determined that the water main was properly marked by the City and upon receiving notice of the problem, the City shut off the water main at its first opportunity.

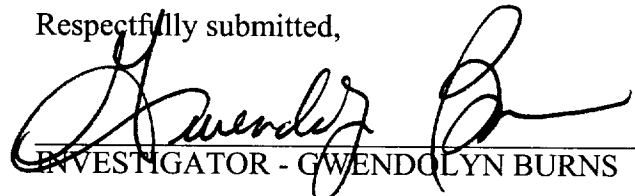
INVESTIGATION:

Statements: City employee X Claimant Others Written Oral X
Pictures Diagrams Reports: Police Dept Report Other
Traffic citations issued: City Driver Claimant Driver
Citation disposition: City Driver Claimant Driver

BASIS OF RECOMMENDATION:

Function: Governmental Ministerial X
Improper Notice More than Six Months Other X Damages reasonable
City not involved Offer rejected Compromise settlement
Repair/replacement by Ins. Co. Repair/replacement by City Forces
Claimant Negligent X City Negligent Joint Claim Abandoned


Respectfully submitted,


INVESTIGATOR - GWENDOLYN BURNS

RECOMMENDATION:

Pay \$ Adverse X Account charged: 1A01 2J01 2H01
Claims Manager  Concur/date 030201
Committee Action: Council Action

cc: Dianne
Witcher

BURNS
01/07/99


GRAY & GILLILAND, P.C.
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ENTERED - 1-13-99 - SB
99L0014 - GWEN BURNS

January 6, 1999

OF COUNSEL
DAVID S. CURRIE
E. REID GARRETT
P. STEVEN KRATZCH

BY HAND DELIVERY

The Honorable William Campbell, Mayor
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

Robert L. Pitts, City Council President
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

Atlanta City Council Members
55 Trinity Avenue, S.W.
Atlanta, Georgia 30335

Vern McCarty, District 1
Debi Starnes, District 2
Michael Bond, District 3
Cleta Winslow, District 4
Sherry Dorsey, District 5
Cathy Woolard, District 6
Lee Morris, District 7
Clair Muller, District 8
Felicia A. Moore, District 9
Clarence T. Martin, District 10
Jim Maddox, District 11
Derrick Boazman, District 12
Mable Thomas, Post 1-At-Large
Julia Emmons, Post 2-At-Large
Doug Alexander, Post 3-At-Large

Sherry Butler
City of Atlanta
Law Department
68 Mitchell Street, S.W., Suite 4100
Atlanta, Georgia 30335-0332

Re: Claims of Gregory Electric Company, Inc., Perry Contracting, and ACSI

The Honorable William Campbell, Mayor
Robert L. Pitts, City Council President
Council Members
January 6, 1999
Page 2

Ladies and Gentlemen:

This law firm represents Gregory Electric Company, Inc., Perry Contracting, and ACSI (a/k/a and d/b/a ACSI of Atlanta). These businesses are contractors and subcontractors, respectively, on a project requiring excavation on Marietta Street in downtown Atlanta for the purpose of installing fiber optic telephone lines.

In the early hours of August 11, 1998, while boring under Marietta Street in the vicinity of the United States Post Office located at the corner of Marietta and Spring Streets, employees of Perry Contracting struck and ruptured a water main located under the street. Prior to commencing this boring, Gregory Electric Company and Perry Contracting contacted the Underground Protection Center and the City of Atlanta Water Department to advise of their intended boring and excavation in this location and to obtain the assistance of those organizations in the location of underground utilities, including water lines.

Subsequently, water line locations were marked by the City of Atlanta Water Department or its designee in "Safety Precaution Blue"; however, on the morning of August 11th, while boring approximately 4 feet to the side of the existing water line markings, the aforementioned water line was struck and ruptured at 12:40 a.m. The City of Atlanta Water Department was immediately notified of the rupture and the fact that water was running uncontrolled down the street, and an employee of the Water Department appeared at the scene in response to the call at approximately 1:00 a.m. Despite the fact that water was flowing freely down Marietta Street at the time, the water Department employee left the scene without stopping the flow of water.

At 1:35 a.m., when the Water Department representative had not returned, Mr. Perry of Perry Contracting made several additional calls to locate Water Department personnel to turn off the water flow, but to no avail.

At 3:00 a.m., the Water Department employee originally summoned to the scene reappeared with one other individual who located the shut-off valve and stopped the water flow at approximately 3:18 a.m.

As a result of this incident, businesses located in and around the Post Office claim to have suffered both property damage and business interruption damage. To date, the following businesses have made damage claims against Gregory Electric Company, and/or Perry Contracting, and/or ACSI in the amounts indicated (if known):

1. Law Office of Melvin Robinson: \$50,000.00 (See enclosed law suit);

The Honorable William Campbell, Mayor
Robert L. Pitts, City Council President
Council Members
January 6, 1999
Page 3

2. Q.V. Williamson & Company, Inc.: \$12,841.98;
3. Reading for Less Worldwide, Inc.: Amount unknown; and
4. Law Offices of Johnson & Lynch: Amount unknown.

Other claims may be made and the amounts set forth above may rise.

It is the contention of Gregory Electric Company, Perry Contracting, and ACSI that the ruptured water line and resulting damage were caused by the negligence of the City of Atlanta and its water department employees and representatives in failing to mark the water line in the first place and in failing to shut off the flow of water within minutes after the rupture when the opportunity arose.

Accordingly, please consider this the ante litem notice required by O.C.G.A. §36-33-5 to be presented to the City prior to the institution of any legal action against the City of Atlanta. Gregory Electric Company, Inc., Perry Contracting, and ACSI hereby make claim against the City of Atlanta for all damages for which they may be found liable to any entity as a result of the foregoing incident and for any and all expenses incurred by them and/or their insurer(s) in the defense of such claims and the prosecution of any third party claims against the City of Atlanta or others.

Further, Gregory Electric Company, Inc., Perry Contracting, and ACSI demand that the City of Atlanta assume the legal defense of Melvin Robinson v. Gregory Electric, Inc., et al., Civil Action No. 98-VS-146828-A, in the State Court of Fulton County and any other action which may be filed arising out of this incident, and that the city indemnify and hold Gregory Electric Company, Inc., Perry Contracting, and ACSI harmless from all judgments and claims arising therefrom.

Should you desire further information or wish to discuss this matter, please contact me at the above address or phone number.

Sincerely,

GRAY & GILLILAND, P.C.



Charles Ratz

CAR:msp
Enclosure

01- R -0380